

NTSB Order No. EA-4400

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of October, 1995

Respondent .

A notice of appeal was due for filing in this proceeding no later than June 16, 1995. Respondent, who was away from his address of record for a 3-week period, did not receive the law judge's order until after the time for filing the notice of appeal had passed. He explains, in a notice of appeal dated June 23, that "I was out of town on business for 3 weeks and was not able to get my mail." In respondent's reply to Administrator's Motion to Dismiss he further states that prior to his departure he had his mail forwarded to his father's house in Billings, Montana. However, he did not contact the Office of Judges at any time *during* his absence to notify them that he would be away from his residence.² Further, he did not reside at the address where the mail was forwarded, but stayed, instead, at a hotel in Great Falls, Montana.

The record shows that the law judge issued an order on May 11, 1995, deeming the complaint admitted and granting the parties a 20-day timeframe to file written briefs regarding sanction.³ He also advised the parties that subsequent to receipt of the briefs or at expiration of the timeframe a decision would be rendered, thereby placing respondent on notice that a decision by the law judge was forthcoming. In light of this notice, respondent should have made arrangements to receive correspondence related to his case in a *timely* manner.

Inasmuch as respondent did not take the necessary steps to ensure timely receipt of information pertaining to the status of his appeal while away from his residence, his tardiness in filing his notice of appeal is not excusable for good cause shown. See Administrator v. Gryder, 6 NTSB 683 (1988). Consequently, his appeal will not be entertained. See Administrator v. Hooper, 6 NTSB 559 (1988).

²Respondent asserts in his reply to the Administrator's motion to dismiss that he provided a temporary address to Judge Geraghty's office and the Office of General Counsel. However, this was after the late notice of appeal had been filed.

³Because respondent did not file a timely answer to the complaint, the law judge deemed admitted violations of Federal Aviation Regulations 61.15(f) and 67.20(b). Following respondent's further failure to submit a written brief on sanction, the law judge affirmed the Administrator's revocation of respondent's second class medical certificate and his 90-day suspension of respondent's commercial pilot certificate.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss respondent's appeal is granted; and
2. Respondent's untimely appeal is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and GOGLIA, Members of the Board, concurred in the above order.